

AMENDED IN SENATE MAY 28, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1565

Introduced by ~~Committee on Insurance (Coto (Chair), Garrick (Vice Chair), Blakeslee, Charles Calderon, Carter, Feuer, Hayashi, Nava, Niello, and Torres)~~ Assembly Member Ruskin
(Principal coauthors: Assembly Members Coto and Fletcher)
(Principal coauthor: Senator Alquist)
(Coauthors: Assembly Members Buchanan, Fong, Jeffries, Lieu, and Ma)
(Coauthor: Senator Correa)

March 12, 2009

~~An act to amend Sections 779.11, 1765, and 11659 of the Insurance Code, relating to insurance. An act to amend Sections 17052.12 and 23609 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1565, as amended, ~~Committee on Insurance Ruskin. Insurance. Income and corporation taxes: credits: research.~~

The Personal Income Tax Law and the Corporation Tax Law, by reference to a specified federal statute, allow a credit against taxes imposed by those laws for increasing research activities. The amount of the credit under both laws is equal to 15% of the excess of the qualified research expenses, as defined, for the taxable year over the base amount, as defined, and, in addition, under the Corporation Tax Law, 24% of the basic research payments, as defined.

This bill would, under both laws for taxable years beginning on or after January 1, 2011, incrementally increase the applicable percentage of the credit for qualified research expenditures from 15% to 20%. This bill would, under the Personal Income Tax Law, also allow a credit for 24% of the basic research payments for taxable years beginning on or after January 1, 2011.

This bill would take effect immediately as a tax levy.

~~Existing law regulates insurance, as specified.~~

~~This bill would make technical, nonsubstantive changes to specified provisions regulating insurance.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 17052.12 of the Revenue and Taxation*
 2 *Code is amended to read:*
 3 17052.12. For each taxable year beginning on or after January
 4 1, 1987, there shall be allowed as a credit against the “net tax” (as
 5 defined by Section 17039) for the taxable year an amount
 6 determined in accordance with Section 41 of the Internal Revenue
 7 Code, except as follows:
 8 (a) For each taxable year beginning before January 1, 1997, the
 9 reference to “20 percent” in Section 41(a)(1) of the Internal
 10 Revenue Code is modified to read “8 percent.”
 11 (b) (1) For each taxable year beginning on or after January 1,
 12 1997, and before January 1, 1999, the reference to “20 percent”
 13 in Section 41(a)(1) of the Internal Revenue Code is modified to
 14 read “11 percent.”
 15 (2) For each taxable year beginning on or after January 1, 1999,
 16 and before January 1, 2000, the reference to “20 percent” in Section
 17 41(a)(1) of the Internal Revenue Code is modified to read “12
 18 percent.”
 19 (3) For each taxable year beginning on or after January 1, 2000,
 20 and before January 1, 2011, the reference to “20 percent” in
 21 Section 41(a)(1) of the Internal Revenue Code is modified to read
 22 “15 percent.”
 23 (4) *For each taxable year beginning on or after January 1,*
 24 *2011, and before January 1, 2013, both of the following shall*
 25 *apply:*

1 (A) The reference to “20 percent” in Section 41(a)(1) of the
2 Internal Revenue Code is modified to read “16.25 percent.”

3 (B) The reference to “20 percent” in Section 41(a)(2) of the
4 Internal Revenue Code is modified to read “24 percent.”

5 (5) For each taxable year beginning on or after January 1,
6 2013, and before January 1, 2014, both of the following shall
7 apply:

8 (A) The reference to “20 percent” in Section 41(a)(1) of the
9 Internal Revenue Code is modified to read “17.50 percent.”

10 (B) The reference to “20 percent” in Section 41(a)(2) of the
11 Internal Revenue Code is modified to read “24 percent.”

12 (6) For each taxable year beginning on or after January 1,
13 2014, and before January 1, 2015, both of the following shall
14 apply:

15 (A) The reference to “20 percent” in Section 41(a)(1) of the
16 Internal Revenue Code is modified to read “18.75 percent.”

17 (B) The reference to “20 percent” in Section 41(a)(2) of the
18 Internal Revenue Code is modified to read “24 percent.”

19 (7) For each taxable year beginning on or after January 1,
20 2015, both of the following shall apply:

21 (A) The reference to “20 percent” in Section 41(a)(1) of the
22 Internal Revenue Code shall apply.

23 (B) The reference to “20 percent” in Section 41(a)(2) of the
24 Internal Revenue Code is modified to read “24 percent.”

25 (c) Section 41(a)(2) of the Internal Revenue Code, relating to
26 basic research payments, shall not apply.

27 (d) “Qualified research” shall include only research conducted
28 in California.

29 (e) In the case where the credit allowed under this section
30 exceeds the “net tax,” the excess may be carried over to reduce
31 the “net tax” in the following year, and succeeding years if
32 necessary, until the credit has been exhausted.

33 (f) (1) With respect to any expense paid or incurred after the
34 operative date of Section 6378, Section 41(b)(1) of the Internal
35 Revenue Code is modified to exclude from the definition of
36 “qualified research expense” any amount paid or incurred for
37 tangible personal property that is eligible for the exemption from
38 sales or use tax provided by Section 6378.

39 (2) For each taxable year beginning on or after January 1, 1998,
40 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the

1 Internal Revenue Code, relating to contract research expenses, is
2 modified to read “this part or Part 11 (commencing with Section
3 23001).”

4 (g) (1) For each taxable year beginning on or after January 1,
5 2000:

6 (A) The reference to “2.65 percent” in Section 41(c)(4)(A)(i)
7 of the Internal Revenue Code is modified to read “one and
8 forty-nine hundredths of one percent.”

9 (B) The reference to “3.2 percent” in Section 41(c)(4)(A)(ii) of
10 the Internal Revenue Code is modified to read “one and
11 ninety-eight hundredths of one percent.”

12 (C) The reference to “3.75 percent” in Section 41(c)(4)(A)(iii)
13 of the Internal Revenue Code is modified to read “two and
14 forty-eight hundredths of one percent.”

15 (2) Section 41(c)(4)(B) shall not apply and in lieu thereof an
16 election under Section 41(c)(4)(A) of the Internal Revenue Code
17 may be made for any taxable year of the taxpayer beginning on or
18 after January 1, 1998. That election shall apply to the taxable year
19 for which made and all succeeding taxable years unless revoked
20 with the consent of the Franchise Tax Board.

21 (3) Section 41(c)(6) of the Internal Revenue Code, relating to
22 gross receipts, is modified to take into account only those gross
23 receipts from the sale of property held primarily for sale to
24 customers in the ordinary course of the taxpayer’s trade or business
25 that is delivered or shipped to a purchaser within this state,
26 regardless of f.o.b. point or any other condition of the sale.

27 (h) Section 41(h) of the Internal Revenue Code, relating to
28 termination, shall not apply.

29 (i) Section 41(g) of the Internal Revenue Code, relating to
30 special rule for passthrough of credit, is modified by each of the
31 following:

32 (1) The last sentence shall not apply.

33 (2) If the amount determined under Section 41(a) of the Internal
34 Revenue Code for any taxable year exceeds the limitation of
35 Section 41(g) of the Internal Revenue Code, that amount may be
36 carried over to other taxable years under the rules of subdivision
37 (e); except that the limitation of Section 41(g) of the Internal
38 Revenue Code shall be taken into account in each subsequent
39 taxable year.

1 *SEC. 2. Section 23609 of the Revenue and Taxation Code is*
2 *amended to read:*

3 23609. For each taxable year beginning on or after January 1,
4 1987, there shall be allowed as a credit against the “tax” (as defined
5 by Section 23036) an amount determined in accordance with
6 Section 41 of the Internal Revenue Code, except as follows:

7 (a) For each taxable year beginning before January 1, 1997,
8 both of the following modifications shall apply:

9 (1) The reference to “20 percent” in Section 41(a)(1) of the
10 Internal Revenue Code is modified to read “8 percent.”

11 (2) The reference to “20 percent” in Section 41(a)(2) of the
12 Internal Revenue Code is modified to read “12 percent.”

13 (b) (1) For each taxable year beginning on or after January 1,
14 1997, and before January 1, 1999, both of the following
15 modifications shall apply:

16 (A) The reference to “20 percent” in Section 41(a)(1) of the
17 Internal Revenue Code is modified to read “11 percent.”

18 (B) The reference to “20 percent” in Section 41(a)(2) of the
19 Internal Revenue Code is modified to read “24 percent.”

20 (2) For each taxable year beginning on or after January 1, 1999,
21 and before January 1, 2000, both of the following shall apply:

22 (A) The reference to “20 percent” in Section 41(a)(1) of the
23 Internal Revenue Code is modified to read “12 percent.”

24 (B) The reference to “20 percent” in Section 41(a)(2) of the
25 Internal Revenue Code is modified to read “24 percent.”

26 (3) For each taxable year beginning on or after January 1, 2000,
27 and before January 1, 2011, both of the following shall apply:

28 (4) *For each taxable year beginning on or after January 1,*
29 *2011, and before January 1, 2013, both of the following shall*
30 *apply:*

31 (A) *The reference to “20 percent” in Section 41(a)(1) of the*
32 *Internal Revenue Code is modified to read “16.25 percent.”*

33 (B) *The reference to “20 percent” in Section 41(a)(2) of the*
34 *Internal Revenue Code is modified to read “24 percent.”*

35 (5) *For each taxable year beginning on or after January 1,*
36 *2013, and before January 1, 2014, both of the following shall*
37 *apply:*

38 (A) *The reference to “20 percent” in Section 41(a)(1) of the*
39 *Internal Revenue Code is modified to read “17.50 percent.”*

1 (B) The reference to “20 percent” in Section 41(a)(2) of the
2 Internal Revenue Code is modified to read “24 percent.”

3 (6) For each taxable year beginning on or after January 1,
4 2014, and before January 1, 2015, both of the following shall
5 apply:

6 (A) The reference to “20 percent” in Section 41(a)(1) of the
7 Internal Revenue Code is modified to read “18.75 percent.”

8 (B) The reference to “20 percent” in Section 41(a)(2) of the
9 Internal Revenue Code is modified to read “24 percent.”

10 (7) For each taxable year beginning on or after January 1,
11 2015, both of the following shall apply:

12 (A) The reference to “20 percent” in Section 41(a)(1) of the
13 Internal Revenue Code shall apply.

14 (B) The reference to “20 percent” in Section 41(a)(2) of the
15 Internal Revenue Code is modified to read “24 percent.”

16 (A) The reference to “20 percent” in Section 41(a)(1) of the
17 Internal Revenue Code is modified to read “15 percent.”

18 (B) The reference to “20 percent” in Section 41(a)(2) of the
19 Internal Revenue Code is modified to read “24 percent.”

20 (c) (1) With respect to any expense paid or incurred after the
21 operative date of Section 6378, Section 41(b)(1) of the Internal
22 Revenue Code is modified to exclude from the definition of
23 “qualified research expense” any amount paid or incurred for
24 tangible personal property that is eligible for the exemption from
25 sales or use tax provided by Section 6378.

26 (2) “Qualified research” and “basic research” shall include only
27 research conducted in California.

28 (d) The provisions of Section 41(e)(7)(A) of the Internal
29 Revenue Code, shall be modified so that “basic research,” for
30 purposes of this section, includes any basic or applied research
31 including scientific inquiry or original investigation for the
32 advancement of scientific or engineering knowledge or the
33 improved effectiveness of commercial products, except that the
34 term does not include any of the following:

35 (1) Basic research conducted outside California.

36 (2) Basic research in the social sciences, arts, or humanities.

37 (3) Basic research for the purpose of improving a commercial
38 product if the improvements relate to style, taste, cosmetic, or
39 seasonal design factors.

(4) Any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas).

(e) (1) In the case of a taxpayer engaged in any biopharmaceutical research activities that are described in codes 2833 to 2836, inclusive, or any research activities that are described in codes 3826, 3829, or 3841 to 3845, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, or any other biotechnology research and development activities, the provisions of Section 41(e)(6) of the Internal Revenue Code shall be modified to include both of the following:

(A) A qualified organization as described in Section 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an institution of higher education as described in Section 3304(f) of the Internal Revenue Code.

(B) A charitable research hospital owned by an organization that is described in Section 501(c)(3) of the Internal Revenue Code, is exempt from taxation under Section 501(a) of the Internal Revenue Code, is not a private foundation, is designated a “specialized laboratory cancer center,” and has received Clinical Cancer Research Center status from the National Cancer Institute.

(2) For purposes of this subdivision:

(A) “Biopharmaceutical research activities” means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities that make use of chemical compounds to produce commercial products.

(B) “Other biotechnology research and development activities” means research and development activities consisting of the application of recombinant DNA technology to produce commercial products, as well as research and development activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(f) In the case where the credit allowed by this section exceeds the “tax,” the excess may be carried over to reduce the “tax” in

1 the following year, and succeeding years if necessary, until the
2 credit has been exhausted.

3 (g) For each taxable year beginning on or after January 1, 1998,
4 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the
5 Internal Revenue Code, relating to contract research expenses, is
6 modified to read “this part or Part 10 (commencing with Section
7 17001).”

8 (h) (1) For each taxable year beginning on or after January 1,
9 2000:

10 (A) The reference to “2.65 percent” in Section 41(c)(4)(A)(i)
11 of the Internal Revenue Code is modified to read “one and
12 forty-nine hundredths of one percent.”

13 (B) The reference to “3.2 percent” in Section 41(c)(4)(A)(ii) of
14 the Internal Revenue Code is modified to read “one and
15 ninety-eight hundredths of one percent.”

16 (C) The reference to “3.75 percent” in Section 41(c)(4)(A)(iii)
17 of the Internal Revenue Code is modified to read “two and
18 forty-eight hundredths of one percent.”

19 (2) Section 41(c)(4)(B) shall not apply and in lieu thereof an
20 election under Section 41(c)(4)(A) of the Internal Revenue Code
21 may be made for any taxable year of the taxpayer beginning on or
22 after January 1, 1998. That election shall apply to the taxable year
23 for which made and all succeeding taxable years unless revoked
24 with the consent of the Franchise Tax Board.

25 (3) Section 41(c)(6) of the Internal Revenue Code, relating to
26 gross receipts, is modified to take into account only those gross
27 receipts from the sale of property held primarily for sale to
28 customers in the ordinary course of the taxpayer’s trade or business
29 that is delivered or shipped to a purchaser within this state,
30 regardless of f.o.b. point or any other condition of the sale.

31 (i) Section 41(h) of the Internal Revenue Code, relating to
32 termination, shall not apply.

33 (j) Section 41(g) of the Internal Revenue Code, relating to
34 special rule for passthrough of credit, is modified by each of the
35 following:

36 (1) The last sentence shall not apply.

37 (2) If the amount determined under Section 41(a) of the Internal
38 Revenue Code for any taxable year exceeds the limitation of
39 Section 41(g) of the Internal Revenue Code, that amount may be
40 carried over to other taxable years under the rules of subdivision

(f), except that the limitation of Section 41(g) of the Internal Revenue Code shall be taken into account in each subsequent taxable year.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

~~SECTION 1. Section 779.11 of the Insurance Code is amended to read:~~

~~779.11. The provisions of subdivisions (f) and (g) of Section 10291.5 shall be applicable to the withdrawal of the approval of forms, whether of life or disability insurance, required by this article to be filed with or approved by the commissioner.~~

~~SEC. 2. Section 1765 of the Insurance Code is amended to read:~~

~~1765. (a) A license under this chapter shall be applied for and renewed by the filing with the commissioner of a written application therefor, in accordance with Section 1652.~~

~~(b) Subject to subdivision (f), the commissioner shall issue a license authorizing any applicant who is trustworthy and competent to transact an insurance brokerage business in a manner as to safeguard the interest of the insured, to act as a surplus line broker from the date of the license until the expiration date specified in Section 1630.~~

~~(c) An applicant for a surplus line broker's license shall, as part of the application and a condition of the issuance of the license, file a bond to the people of the State of California in the sum of fifty thousand dollars (\$50,000), conditioned that the licensee will fully and faithfully comply with the requirements of this chapter, and all applicable provisions of this code. The bond shall be subject to Sections 1662 and 1663. A surplus line broker bond is not required for an individual licensed as a surplus line broker who only transacts on behalf of a licensed surplus line broker organization.~~

~~(d) The filing fee for a license to act as a surplus line broker shall be one thousand dollars (\$1,000) every two years, or for any initial fractional license year. For an individual licensed as a surplus line broker who only transacts on behalf of a surplus line broker organization, the filing fee shall be five hundred dollars (\$500) every two years, or for any initial fractional license year. Every applicant for a business entity license, as provided in subdivision (a) of Section 1765.2, shall provide the names of all persons who~~

1 may exercise the power and perform the duties under the license.
2 Whenever an organization licensed as a surplus line broker desires
3 to change, remove, or add to the natural person or persons who
4 are to transact insurance under authority of its license, it shall
5 immediately file an application or notice with the commissioner
6 for an endorsement changing its license accordingly, on a form
7 prescribed by the commissioner. The fee for adding or removing
8 from any surplus line broker's license issued to an organization
9 the name of any natural person, named thereon, shall be
10 twenty-four dollars (\$24). The commissioner shall require that the
11 qualifying examination provided by subdivision (a) of Section
12 1676 be taken by any natural person named by the organization
13 to exercise its agency or brokerage powers who would be required
14 to take and pass the qualifying examination. That natural person
15 or persons and the organization are in all other respects subject to
16 the provisions of this chapter and the insurance laws.

17 (e) The department is authorized to collect additional license
18 fees resulting from the increases in license fees provided by
19 Chapter 29 of the Statutes of 2008 and shall credit any overpayment
20 resulting from reductions in license fees provided by that act.

21 (f) A business entity licensed under this chapter shall provide
22 two hours of appropriate training to its employees who solicit,
23 negotiate, or effect insurance coverage placed by a nonadmitted
24 insurer. The training shall be given to each eligible employee every
25 five years. The surplus line advisory organization authorized
26 pursuant to Chapter 6.1 (commencing with Section 1780.50) shall
27 develop the curriculum for the training.

28 (g) The license shall be renewed in accordance with, and subject
29 to, Sections 1717, 1718, 1719, and 1720.

30 (h) The commissioner may deny, suspend, or revoke any license
31 applied for or granted pursuant to this chapter on all or any one of
32 the grounds and in accordance with the procedures provided in
33 Article 6 (commencing with Section 1666) and Article 13
34 (commencing with Section 1737) of Chapter 5, whenever the
35 commissioner finds that the applicant or licensee has committed
36 a violation of any provision of this code.

37 SEC. 3. Section 11659 of the Insurance Code is amended to
38 read:

39 11659. The approved form of policy, limited pursuant to
40 Section 11657, shall not be otherwise limited except by

1 endorsement thereon in accordance with a form prescribed by the
2 commissioner or in accordance with rules adopted by the
3 commissioner. The endorsement form shall not be subject to
4 Section 11658. Before prescribing the endorsement form or
5 adopting a rule, the commissioner shall consult concerning it with
6 the Workers' Compensation Appeals Board.

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